

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Dennis Barnette
c/o Zachary Gottesman, Esq.
Gottesman & Associates, LLC
36 East 7th St, Suite 1650
Cincinnati, Ohio 45202

Plaintiff,

vs.

City of Cincinnati, Ohio
801 Plum Street
Cincinnati, Ohio 45202-5705,

and

Eliot Isaac (Individually and in his
Official Capacity as Chief of Police)
801 Plum Street
Cincinnati, Ohio 45202-5705,

and

Patrick Duhaney (Individually and in his
Official Capacity as City Manager)
801 Plum Street
Cincinnati, Ohio 45202-5705,

Defendants.

Plaintiff, through counsel, for his Complaint against the Defendants, states as follows:

Parties

1. Plaintiff, Dennis Barnette, is and has been a Cincinnati Police Officer with an exemplary service history since 2003.
2. Defendant, City of Cincinnati, is a municipality organized under the laws of the State of Ohio.

Case No.

A1902022

Judge

Allen

VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF AND OTHER
DAMAGES WITH JURY DEMAND
ENDORSED HEREON

3. Defendant, Patrick Duhaney, is the City Manager for the City of Cincinnati and this suit is against him in his individual and official capacity.

4. Defendant, Eliot Isaac, is the Chief of the Cincinnati Police Department (hereinafter CPD) and this suit is brought against him in his individual and official capacity.

Facts

5. On 23 Dec. 2018, at approximately 0330 hours at 7733 Reading Road, Officer Barnette was conducting a directed patrol for a parking complaint in the vicinity of the Brownstown Nightclub.

6. While on patrol, at that location, Officer Barnette heard yelling and observed a physical fight between a female black, Ayanna Riley, and a male black, Derrick Freeman.

7. In addition to Officer Barnette, there were additional CPD personnel on location assigned to the off-duty detail provided to the Brownstone Nightclub.

8. As Riley and Freeman were separated, Officer Barnette approached Riley and attempted to calm her down.

9. Officer Barnette stood approximately two feet away from Riley in between her and Freeman.

10. Riley continued her disorderly behavior by yelling and directing inflammatory comments and epithets at Freeman

11. Officer Barnett demanded Riley cease her disorderly behavior while moving towards her.

12. Riley refused to comply and swung her right hand in the air striking Officer Barnette in the face.

13. After she struck him in the face, Officer Barnette grasped Riley's left arm, pulled her forward and braced her against the hood of a vehicle.

14. As off-duty detail officers engaged in the arrest to assist Officer Barnette with handcuffing Riley, Officer Barnette stated, "nigger slapped me in the face".

15. Prior to and throughout Officer Barnette's interaction with Riley, she and others were using racial slurs, profanity, and other coarse language.

16. Within days of this incident, Officer Barnette was stripped of his police powers and required to relinquish his City-issued weapon and badge. (See Attached "Department Level Hearing Summary".)

17. As of the date of this filing, Officer Barnette's police powers remain suspended and there is no indication that they will be reinstated anytime in the near future.

18. Officer Barnette has an otherwise exemplary service record with numerous commendations and no prior significant disciplinary history.

19. There is not now, nor has there ever been a suggestion of or evidence that Officer Barnette is a threat to public safety or unfit for duty.

20. On 26 Sept. 2018, another Cincinnati Police Officer, Donte Hill, was involved in an arrest during which he was recorded using identical or similar language as Officer Barnette.

21. Officer Hill received a written reprimand for coarse language and no suspension of his police powers.

22. Officer Hill's written reprimand was approved by the CPD command staff including the Chief, Asst. Chief Neudigate, and Capt. Broxterman on 23 Oct. 2018.

23. The only material difference between the incident involving Officer Barnette and Officer Hill is that Officer Barnette is a male white and Officer Hill is a male black.

24. After Officer Barnette's police powers were suspended, the Chief was either advised of or realized on his own the anomalous situation he had created by treating two officers completely differently based solely on their race for identical conduct.

25. Instead of reinstating Officer Barnette's police powers, the Chief suspended Officer Hill's police powers although his discipline had been reviewed, approved, and imposed.

26. The suspension of Officer Barnette's police powers and confiscation of his duty weapon and badge renders Officer Barnette ineligible to work off-duty details as he had in the past, reduces his court-time because he is no longer making arrests, causes substantial loss of stature and professional standing, and creates a serious safety hazard for him because he is unarmed and has no defense against violent criminals he has arrested and is required by the City to confront as a witness in Court.

27. The loss of his ability to perform off-duty details has directly caused and will continue to cause Officer Barnette to lose substantial income upon which he and his family rely for their economic well-being, and without which Officer Barnette will suffer irreparable harm including, without limitation, loss of his home because of his inability to pay his mortgage and other debts, and substantial damage to his credit history and rating by causing him to default on financial obligations.

28. The loss of paid court-time has directly caused and will continue to cause Officer Barnette to lose substantial income upon which he and his family are reliant for their economic well-being, and without which Officer Barnette will suffer irreparable harm

including, without limitation, loss of his home because of his inability to pay his mortgage and other debts, and substantial damage to his credit history and rating by causing him to default on financial obligations.

29. The Police Chief, Eliot Isaac, has historically used suspension of CPD personnel police powers as an unchecked and completely discretionary disciplinary measure in an arbitrary, capricious, and racially discriminatory manner.

30. The Chief does this because using suspension of police powers as discipline falls outside of the collective bargaining agreement between FOP Lodge No. 69 and is not subject to peer review or the union grievance process.

31. The suspension of Officer Barnette's police powers is an adverse employment action that violates Officer Barnette's Constitutional rights and violates Chap. 4112 of the Ohio Revised Code.

32. The acts and omissions that form the basis of this Complaint were done with the express approval of Defendant, Patrick Duhaney, as City Manager.

Count 1 - Employment Discrimination

33. Plaintiff incorporates the preceding allegations by reference as if fully restated herein.

34. Pursuant to R.C. §4112.02, it is an unlawful discriminatory practice to discriminate against Officer Barnette with respect to the terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, based on race.

35. Defendants have engaged in an unlawful discriminatory practice in violation of R.C. 4112.02 (A).

36. As a direct and proximate result of Defendants' violation of R.C. 4112.02(A), Officer Barnette has sustained general, special, and economic damages including, without limitation, lost income, loss to his reputation, and emotional pain and suffering.

37. As a direct and proximate result of Defendants' violation of R.C. 4112.02(A), Officer Barnette is suffering further irreparable harm including, without limitation, financial ruin, loss of his home, and negative impact on his credit rating.

38. Plaintiff is entitled to damages and equitable relief pursuant to R.C. §4112.99.

Count 2 - 42 U.S.C. §1983

39. Plaintiff incorporates the preceding allegations by reference as if fully restated herein.

40. Defendants have violated Plaintiff's Constitutional Rights under the Fourteenth Amendment by depriving him of his protected property interests in an arbitrary, capricious, unlawful, and racially discriminatory manner without Due Process of law, both substantive and procedural, and are liable to Plaintiff pursuant 42 U.S.C. §1983 for damages and subject to the equitable jurisdiction of this Court.

WHEREFORE, Plaintiff demands judgment against Defendants for general, compensatory, special, and punitive damages in an amount in excess of \$25,000 as proven at trial, immediate and permanent equitable relief, his costs herein expended, reasonable attorney's fees and such other relief as this Court deems just.

Respectfully submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Trial Attorney for Plaintiff
Gottesman & Associates, LLC
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Cincinnati, Ohio 45202

/s/ Robert J. Thumann
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Thumann@ctlawcincinnati.com
Attorney for Plaintiff

Jury Demand

Plaintiff hereby demands trial by jury on all issues so triable.

Respectfully submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Trial Attorney for Plaintiff

Praecipe

To the CLERK:

Please serve this Complaint and a Summons upon the Defendants by certified
U.S. Mail at the addresses listed in the caption.

Respectfully submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Trial Attorney for Plaintiff

Date: April 2, 2019

To: Colonel Eliot Isaac, Police Chief

From: Captain Aaron R. Jones, District Two Commander/Police Law Liaison

Copies to:

Subject: Department Level Hearing Summary – Officer Dennis Barnette, District Four,
IIS Case #18153

On Thursday, March 7, 2019, at 0930 hours, I conducted a Pre-Disciplinary hearing at 310 Ezzard Charles Drive, for Internal Investigations Section Case #18153. The Police Department placed charges of "Failure of Good Behavior" and "Administrative Regulations" against Police Officer Dennis Barnette, P19, District Four. Officer Barnette was charged with a violation of Section 1.23(C) of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department and City of Cincinnati Administrative Regulation #25.

REPRESENTATION

The following individuals were present at the Department Hearing:

- Captain Aaron R. Jones, Department Hearing Officer
- Police Sergeant Germaine Love, Hearing Coordinator
- Police Sergeant Steven Fox, Hearing Recorder
- Police Officer Dennis Barnette, District Four
- Police Sergeant, Dan Hils, President, F.O.P. #69.

SPECIFICATION I:

On December 23, 2018, at approximately 0330 hours, at 7733 Reading Road, Officer Barnette was conducting a directed patrol for a parking complaint in the vicinity of Brownstone Nightclub when he heard yelling and observed a physical fight between Ms. Ayanna Riley and Mr. Derrick Freeman. Officers assigned to the off-duty extension of police services detail separated Ms. Riley and Mr. Freeman and began their investigation of the altercation.

Officer Barnette approached Ms. Riley in an attempt to calm her down. Officer Barnette stood approximately two feet from Ms. Riley as she continued her disorderly behavior by yelling and directing inflammatory comments at Mr. Freeman.

Officer Barnette demanded several times for Ms. Riley to be quiet while moving closer to her. Ms. Riley refused to comply and swung her right hand in the air, striking Officer Barnette in the face.

Officer Barnette grasped Ms. Riley's left arm, pulled her forward and braced her against the hood of a vehicle. Officers assigned to the off-duty extension of police services detail engaged in the arrest to assist Officer Barnette with handcuffing Ms. Riley. During the handcuffing of Ms. Riley, Officer Barnette stated, "[REDACTED] slapped me in the face!" Ms. Riley was placed in custody and arrested for Assault, Section 2903.13 Ohio Revised Code.

Officer Barnette's actions are in violation of Rule 1.23(C) of the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department, which states:

1.23(C) Members of the Department shall not express, verbally or in writing any prejudice or offensive comments concerning race, religion, national origin, life-style, gender, or similar personal characteristics.

AND

City of Cincinnati's Administrative Regulation No. 25, which states, in part:

Definition of Discriminatory Harassment

Examples of discriminatory harassment that will violate this policy and may violate the law include:

Oral or written communications that contain offensive name-calling, jokes, slurs, negative stereotyping, or threats. This includes comments or jokes that are distasteful or targeted at individuals or groups based on age, gender, sexual orientation, Gender expression and identity, marital status, disability, religion, race, color, ethnicity, national origin, Appalachian regional ancestry, veteran status, military status, genetic history, or HIV status.

AND

Employee/Non-Employee Discriminatory Harassment

An on-duty employee who subjects a non-employee (vendor, consultant, sales representative, temporary employee, etc.) to discriminatory harassment in the workplace is subject to this regulation.

MITIGATION FOR SPECIFICATION I:

After reading of the charges, the hearing began with a viewing of Body Worn Camera (BWC) footage which captured Officer Barnette saying, "[REDACTED] slapped me in the face!" as he was attempting to place Ms. Riley into custody. I asked Officer Barnette what his feelings were after watching the footage. Officer Barnette stated it was unacceptable, but he did not remember making the statement. Officer Barnette was shocked when he first learned of the allegation that he had used the racial word (referring to the racial slur) against Ms. Riley.

I asked Officer Barnette, "Why do you think you said it?" Officer Barnette did not know why he said it. Officer Barnette explained he was struck in the face, but acknowledged being struck would not make the use of the word acceptable. Officer Barnette further explained he had not had much sleep leading up to the incident because he had been remodeling his kitchen, but again acknowledged the lack of sleep would not excuse the use of the word.

I asked Officer Barnette what he meant in his IJU interview when he stated, "The word is not in my vocabulary." Officer Barnette stated he does not use that word. The word is offensive to Officer Barnette. Officer Barnette again stated he did not know why he used the word, did not remember using the word, and pointed out the fact that he has been with the Department for 16 years and has not had any racial problems.

During the viewing of the BWC footage, the shock and disbelief of those on scene, both civilian and sworn, is easily perceived. I pointed out to Officer Barnette the reaction of all those who heard the slur being used. I also pointed out to Officer Barnette the different effects the use of the slur had at both the micro (reactions by those on scene) and macro level (publicity garnered by the incident). Officer Barnette explained he was not aware of some of the consequences of using the word because he was not present and had not viewed the footage until the hearing.

I also pointed out that at one point during the BWC footage, some of the civilians on scene become concerned that Officer Barnette was alone with Ms. Riley, assumedly due to the fact he had used slur. The civilians asked one of the African-American officers on scene to go to Officer Barnette and Ms. Riley. Officer Barnette did not have a response to my statement.

Sergeant Hils believed that Officer Barnette was being truthful when he stated he did not remember using the word and it helped show that the use of the word was not a conscious decision. Sergeant Hils spoke about the fact that Officer Barnette is well aware of the impact by him using the word. Officer Barnette now feels isolated at work from time to time. Officer Barnette has been restricted to a limited duty status for the last couple of months but remains diligent to his job duties. Sergeant Hils stated Officer Barnette has already been punished for using the word even though it is undetermined what level of consciousness caused Officer Barnette to use the word.

Sergeants Hils did not believe that Officer Barnette consciously made the decision to use the word. Officer Barnette is a retired veteran and tenured employee of the Department. Sergeant Hils also commented on the fact that many of the council members who called for Officer Barnette to be fired when the allegation of using the word was made public and prior to any investigation, were about to have text messages released that showed the council members themselves made insulting statements in their messages.

Sergeant Hils also pointed out the fact that another Department member had used the word and had originally received a written reprimand. Sergeant Hils agreed that Officer Barnette should be reprimanded for use of the word. Sergeant Hils talked about the fact that outside stimuli, such as fear or pain, can cause a reaction through the body that affects the brain which could lead to a person saying something they would not normally say. That same stimuli could cause a statement to be made that is not a fully conscious decision.

Sergeant Hils stated that Officer Barnette will concentrate in the future so that he does not use the word again.

Sergeant Hils was concerned that the political interest in this particular allegation could affect how the Department, the Police Chief, and I as the Hearing Officer would handle the violation. Because there is such interest, Sergeant Hils feared the process of adjudicating the violation would not be treated in a fair manner. Sergeant Hils again talked about Officer Barnette understanding the effect of him using the word and further stated Officer Barnette will never be the same.

I acknowledged that by using the slur, Officer Barnette will suffer long lasting effects. Specifically, I asked Officer Barnette if he was aware that the use of the slur would most likely be used to challenge his credibility as a witness every time he appears in court for the rest of his career. Officer Barnette acknowledged this was a possibility.

I asked Officer Barnette, "What is life like at the District right now?" Officer Barnette stated that overall, it was pretty good. He had received a lot of support from everyone and had not had any negative encounters. I asked Officer Barnette if he had given any thought to how he would interact with citizens if he were ever allowed to return to patrol duties. Officer Barnette stated he thought about it all the time. He explained that he would need to be more cautious when dealing with citizens to ensure nothing like this ever happened again.

I expressed my concern to Officer Barnette over the idea that he would have to better "control himself" if he were allowed to return to patrol duties. I suggested that most people would not have to "control" themselves to prevent the use of a racial slur. Sergeant Hils responded that Officer Barnette hears this word used by citizens on a daily basis when out on patrol, especially in African-American communities. Sergeant Hils questioned whether hearing the word used so much may have led to Officer Barnette using it. Specifically, Sergeant Hils wondered if it was possible that Officer Barnette heard the word being used at the scene on the night he used it.

Sergeant Hils expressed fear that if he were in the same situation now as Officer Barnette, that he would be so fearful of using the word again that it may actually attach somehow subconsciously, assumedly suggesting it could be used again. Sergeant Hils explained the difficulty with the fact that the word will always be in the back of Officer Barnette's mind and he will have to figure out how not to ever say the word again. This difficulty is compounded by the fact that he does not know why he said it in the first place. Sergeant Hils acknowledged another use of the word would be fatal for Officer Barnette's career.

Sergeant Hils explained that the use of the word was an aberration and it took sixteen years to occur. I reminded Sergeant Hils and Officer Barnette that the expectation is to make it an entire career without using the slur. Sergeant Hils reiterated that the use of the word took less than a second, and was so quick that he believed it was a subconscious act. Sergeant Hils contrasted that against a willful, conscious decision to make a derogatory statement, or repeating a statement over and over. Sergeant Hils stated he did not believe that Officer Barnette is a racist.

I expressed my concern about the fact that the utterance of the racial slur was the result of subconscious decision making. I asked if Officer Barnette did not know why he said it, how

would he be able to control himself in the future? Sergeant Hils responded, "I don't know." Sergeant Hils again brought up Officer Barnette's level of exhaustion the night the word was used and the fact he was assaulted. Sergeant Hils did not believe using the word one time under those conditions proved that Officer Barnette is a racist. Sergeant Hils pointed out his frustration with that exact point; That Officer Barnette is being painted as a racist by politicians after using the word just once, under the conditions of that evening.

Sergeant Hils commented that there would be a lot of pressure on me to make a decision regarding this case that would be politically acceptable. I assured Sergeant Hils that I would make the decision I felt was most appropriate, and navigate any scrutiny I received from it the best way I could.

Officer Barnette closed the hearing by apologizing for using the word and wished he could take it back. Although he had not personally apologized to the officers on scene that night for using the word, he intended to apologize to them.

IIU made a final statement regarding the use of the word between civilians and police officers, pointing out the fact that officers are held to a higher standard when it comes to use of racially offensive language. IIU also acknowledged the use of the word was a subconscious decision because if it were a conscious decision, that would be indicative of a more serious issue.

ANALYSIS

There is no doubt Officer Barnette used arguably the most heinous racial slur in the English language as understood in current American society. Officer Barnette's use of the slur is even more egregious considering he was upset and physically restraining an African-American woman when it was uttered. It suggests Officer Barnette's use of the word was to demean another citizen because of her race.

Officer Barnette will have to deal with the ramifications of his actions for the rest of his career. Specifically, his credibility as a police officer and as a witness will always be called into question, especially in circumstances involving African-Americans. Every time Officer Barnette is subpoenaed to court, the prosecution will have to provide the facts of this incident to the defense. Officer Barnette will be forced to overcome this hurdle time and time again to have his testimony deemed credible.

The only mitigating factor in this incident is that Officer Barnette has never been accused of using racial slurs or acting in a derogatory manner in the past. If that were the case, I would recommend Officer Barnette be terminated from the Cincinnati Police Department. As it stands now, Officer Barnette is a sixteen-year veteran of the Department. One single utterance of the slur, without any other pattern or practice of prejudice to point to, should not lead to termination. I believe a second violation should lead to immediate dismissal.

The disciplinary matrix contained in the Manual of Rules and Regulations and Disciplinary Process for the Cincinnati Police Department recommends between a 5-7 day suspension for a first violation of Rule 1.23(C). The City of Cincinnati's Administrative Regulation No. 25 distinguishes between conduct that creates a hostile work environment (interferes with another

person's work performance) and conduct that does not rise to a hostile work environment. It is my belief, after watching the BWC footage, that a hostile work environment was created when Officer Barnette uttered the slur. Everyone who heard the slur, both sworn and civilian, immediately ceased their activities at the time and became solely concerned with one issue; Officer Barnette's use of the slur. Under this situation, Administrative Regulation No. 25 recommends a minimum of a forty hour suspension and attendance of an Administrative Regulation No. 25 training session for a first violation.

As stated previously, Officer Barnette used the slur while angry and attempting to take an African-American female into custody. The circumstances are egregious and deserve the highest penalty recommended by the disciplinary matrix.

FINDING

Based on the information provided by the Internal Investigations Section and the information presented at the Department Hearing, there is a SUSTAINED finding for Specification I.

RECOMMENDATION

After weighing the information presented to me in this matter and adhering to the Police Department's progressive disciplinary matrix; I recommend Police Officer Dennis Barnette, receive the following corrective actions:

- A seven day (7) day, fifty-six (56) hour **SUSPENSION**
- **Administrative Regulation No. 25 Training Session at the Police Academy**
- **An intervention plan consisting of weekly reviews of Officer Barnette's BWC footage for the next twelve (12) months by his direct supervisor to ensure fair and impartial delivery of police services. Those reviews will be documented weekly via ESL entries in Officer Barnette's ETS file.**

ARJ

ARJ C/

approved

EKS
4/19/19

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

DENNIS BARNETTE

Case No.

Plaintiff,

Judge

vs.

CITY OF CINCINNATI, OHIO, et al.

Defendants.

**PLAINTIFF DENNIS BARNETTE'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

Plaintiff, Dennis Barnette, pursuant to Ohio Civil Rule 65, requests this Court to issue a temporary restraining order and/or a preliminary injunction that:

1. Immediately reinstates Officer Dennis Barnette's police powers with the Cincinnati Police Department.

This motion is supported by the attached memorandum.

Respectfully Submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Trial Attorney for the Plaintiff
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/s/ Robert J. Thumann
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MEMORANDUM

I. INTRODUCTION

Plaintiff, Dennis Barnette, requests a temporary restraining order and/or a preliminary injunction ordering Defendants, City of Cincinnati, Ohio, et al., to reinstate Officer Barnette's police powers with the Cincinnati Police Department. In conjunction with this motion, a Complaint has been filed with the Court and Plaintiff incorporates by reference the Complaint and exhibits herein. Regardless, below is a brief summary of the facts.

II. STATEMENT OF FACTS

Officer Barnette is a veteran and has been with the Cincinnati Police Department for 16 years. On December 23, 2018, Officer Barnette was conducting a directed patrol for a parking complaint near Brownstown Nightclub. During the patrol, Officer Barnette observed a physical fight between a female black, Ayanna Riley, and a male black, Derrick Freeman. Additional off-duty officers who were on detail for Brownstone observed the altercation and assisted in separating Ms. Riley and Mr. Freeman.

Officer Barnette approached Ms. Riley in an effort to calm her down as she and Mr. Freeman were separated; however, Ms. Riley continued her disorderly behavior. Ms. Riley refused to comply with Officer Barnette's orders to calm down, and she struck Officer Barnette in the face as he approached her. After being struck, Officer Barnette grasped Ms. Riley's left arm, pulled her forward and braced her against the hood of a vehicle. Officer Barnette then stated, "Nigger slapped me in the face." Prior to and throughout Officer Barnette's interaction with Ms. Riley, she and others were using similar racial slurs, profanity, and other coarse language.

Just days following this incident, Officer Barnette was stripped of his police powers within the Cincinnati Police Department. To this date, he remains suspended despite an otherwise exemplary service record, numerous commendations, and no previous disciplinary history. Officer Barnette has also never been considered a threat to public safety or unfit for duty, prior to and including the incident.

A similar incident occurred on September 26, 2018 with a different officer, Donte Hill; however, the initial outcome was much different. Officer Hill was recorded using the same slur as Officer Barnette in front of civilians, albeit in a different context. Officer Hill received only a written reprimand for his use of coarse language. The reprimand was approved on October 23, 2018. The only material difference between Officer Barnette and Officer Hill is their race. Officer Barnette is a white male, Officer Hill is a black male.

Following the suspension of Officer Barnette's police powers with the Cincinnati Police Department, the Cincinnati Chief of Police was advised of, or at the very least realized, the anomalous situation his department had created by treating two officers with identical conduct completely different based solely on their race. Presumably, in an effort to equalize the situation and prevent backlash, in lieu of reinstating Officer Barnette, Officer Hill was retroactively suspended despite already receiving a reprimand months earlier.

Chief Eliot Isaac has deprived Officer Barnette not only of his police powers, but also of his reputation, credibility, income and support to his family, and more. Chief Isaac has a history of suspending Cincinnati Police Department personnel unchecked and as a completely discretionary disciplinary measure in an arbitrary, capricious, and racially discriminatory manner. He can do this because the suspensions are not within the scope of

the CBA between FOP Lodge No. 69, subject to peer review or the union grievance policy. In effect, he has caused Officer Barnette irreparable harm.

III. LEGAL ARGUMENT

The standard for issuing a temporary restraining order and/or a preliminary injunction is as follows:

- 1) Whether the party seeking the injunction has shown a substantial likelihood of success on the merits;
- 2) Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
- 3) Whether the issuance of a preliminary injunction would cause substantial harm to third parties; and
- 4) Whether the public interest would be served by issuing the injunction.¹

A. Plaintiff has a Substantial Likelihood of Success on the Merits

Chief Isaac abused his discretion to suspend officers based purely on race. No other facts exist to justify the suspension of Officer Barnette and subsequent retroactive suspension of Officer Hill. This is blatant employment discrimination pursuant to R.C. §4112.02. In the "Department Level Hearing Summary" provided to Chief Isaac regarding Officer Barnette's conduct, only a seven-day suspension was suggested. (See attached.) This was based on the disciplinary matrix. Officer Barnette's continued suspension is

¹ *Convergys Corp. v. Tackman*, 169 Ohio App.3d 665, 666 (Ohio App. 1 Dist. 2006) citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267 (Ohio App. 1 Dist. 2000.)

unwarranted, an abuse of Chief Isaac's powers, unconstitutional, and discriminatory. Therefore, Plaintiff has a substantial likelihood of success on the merits.

B. Plaintiff is Threatened with Irreparable Injury.

Officer Barnette has suffered and will continue to suffer irreparable harm if injunctive relief is not granted to reinstate his police powers. Through his continued suspension, Officer Barnette is ineligible to work off-duty details and paid court-time which has a substantial impact on not only Officer Barnette, but also his family, who is reliant upon the income provided from these details to pay their bills each month. He has experienced a loss of stature and professional standing in what has been an otherwise exemplary 16-year career with the Cincinnati Police Department. Defendants have created an unsafe work and living situation for Officer Barnette by confiscating his weapon despite the fact he still has to face violent criminals as a witness in court. Therefore, without injunctive relief, Officer Barnette will continue to suffer immediate and irreparable injury.

C. Injunctive Relief Will Not Impose Undue Hardship on Third Parties, And Will Serve The Public Interest.

No third-party's interest will be harmed by the injunctive relief sought. The relief will prevent further harm to a veteran and 16-year officer with the Cincinnati Police Department. The State of Ohio and this Court cannot continue to allow abuse of discretion within the police department which leads to arbitrary and discriminatory employment practices. The injunctive relief sought not only prevents further harm to Officer Barnette, but serves the public interest to prevent such abhorrent behavior in the future.

IV. CONCLUSION

For the reasons above, Officer Barnette respectfully requests that the Court enter an injunction requiring Defendants to reinstate Officer Barnette to his police powers with the Cincinnati Police Department.

Respectfully submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Trial Attorney for the Plaintiff
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/s/ Robert J. Thumann
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